DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO	
1437 Bannock Street Denver, CO 80202 FRED J. JOSEPH, Securities Commissioner for the State of Colorado,	
Plaintiff,	
v.	
SUN AND SAND, LLC, a Colorado Limited Liability Company, a.k.a. SAND AND SUN LLC, and STEVEN W. O'NEAL,	
Defendants.	↑ COURT USE ONLY ↑
JOHN W. SUTHERS, Attorney General CHRISTINE C. STRETESKY, Assistant Attorney General*	Case No.:
1525 Sherman Street, 5 th Floor	Div.: CV
Denver, CO 80203	
303-866-5278	Courtroom:
Registration Number: 31749	
*Counsel of Record	
COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF	

Plaintiff, Fred J. Joseph, Securities Commissioner for the State of Colorado, by and through his counsel, the Colorado Attorney General, and for his Complaint against the Defendants, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, Fred J. Joseph, as the Securities Commissioner for the State of Colorado ("Commissioner"), is authorized pursuant to § 11-51-703, C.R.S. (2005), to administer all provisions of the Colorado Securities Act (§§ 11-51-101 to 708, C.R.S. (2005)) ("Act"). Pursuant to § 11-51-602, C.R.S. (2005), the Commissioner may seek preliminary and permanent injunctive relief as well as damages, restitution, disgorgement, and other equitable relief. Venue is properly in this Court pursuant to § 11-51-602(1), C.R.S. (2005).

THE DEFENDANTS

- 2. Defendant Sun and Sand, LLC, is a Limited Liability Company formed on June 4, 2004 under the laws of the State of Colorado with its principal place of business located at 17029 E. Linvale Place, Aurora, Colorado 80013. Defendant Sun and Sand, LLC is also known as and holds bank accounts under the name Sand and Sun, LLC.
- 3. Defendant Steven W. O'Neal ("O'Neal") is an adult male whose last known address is 17029 E. Linvale Place, Aurora, Colorado 80013.
- 4. At all time relevant herein, on information and belief, Defendant O'Neal was the sole officer, director, agent, member, employee, representative, and/or control person of Sun and Sand, LLC and was responsible for the day-to-day management of Sun and Sand, LLC including overall investment, risk management, marketing, sales, and investor relationship services.

GENERAL ALLEGATIONS

Defendants' Scheme to Defraud Investors

- 5. Beginning in at least June of 2004, and continuing until August, 2004, Defendant O'Neil solicited at least three members of the Colorado public to invest in membership interests in his company, Defendant Sun and Sand, LLC ("Defendant Sun").
- 6. Defendant O'Neal represented to investors that he is a tile contractor who has allegedly invented three different inventions used for stone-tile finishing. Defendant O'Neal represented to investors that Defendant Sun was formed for the purpose of raising funds to produce a prototype model of the stone-tile finishing inventions and for the manufacture and production of the alleged inventions created by Defendant O'Neal. At the time of their investment, investors were told by Defendant O'Neal that the engineering and patent work had been completed for the three inventions. Additionally, Defendant O'Neal represented to investors through written material that Defendant O'Neal was the patent holder of these three inventions.
- 7. Defendant O'Neal sold each membership in Defendant Sun for \$2,500.00 which entitled the investor to one percent (1%) of the net profit or loss of Defendant Sun. Investors were told by Defendant O'Neal that there were a total of 100 memberships in Defendant Sun; 51 were retained by Defendant O'Neal and 49 were for sale. Defendant O'Neal sold five investor memberships in Defendant Sun and Sand, LLC for a total of \$12,000.00.

- 8. In connection with the offer and sale of the investments in Defendant Sun, Defendant O'Neal, either directly or indirectly, made written and oral representations to investors in and from the State of Colorado, including, but not limited to, the following:
 - a. their investments would be used for production of prototypes of the inventions;
 - b. their investments would be used for the manufacture and production of the inventions;
 - c. that O'Neal held the patents to the three inventions; and
 - d. that the books and records would be maintained according to sound accounting principles and practices.
 - 9. In truth and material fact, and contrary to the representations made by O'Neal;
 - a. Defendant O'Neal used only \$2,600.00 of investor money on costs related to the inventions. The remaining \$8,900.00 of investor monies was spent on Defendant O'Neal's personal expenses;
 - b. while Defendant O'Neal had applied for patents at the time investor funds were collected, no patents were ever issued; and
 - c. Defendant O'Neal neither maintained nor caused to be maintained any books or records concerning Defendant Sun.
- 10. Further, Defendant O'Neal failed to disclose to investors, in connection with the offer and sale of investments in Defendant Sun, material facts, including, but not limited to the following:
 - a. that he used or would be using their investment funds for his own personal expenses; and
 - b. that he would be using investor funds to reimburse himself for work done prior to the formation of Defendant Sun and Sand, LLC.

FIRST CLAIM FOR RELIEF

[Securities Fraud (§ 11-51-501(1), C.R.S.)] (Against All Defendants)

- 11. Paragraphs 1 through 10 are incorporated herein by reference.
- 12. The investment opportunity in Sun and Sand, LLC offered and sold to investors by Defendants are "securities" under the Act in that they are at least "investment contracts" as defined in § 11-51-201(17), C.R.S. (2005).
- 13. In connection with the offer, sale, or purchase of securities in Colorado, the Defendants, directly or indirectly:
 - a. employed a device, scheme, or artifice to defraud;
 - b. made written and oral untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit on investors;

in violation of § 11-51-501(1), C.R.S. (2005).

- 14. The Defendants recklessly, knowingly, or with intent to defraud, sold securities in violation of § 11-51-501(1), C.R.S. (2005). The Defendants are therefore liable to the Commissioner for damages under § 11-51-604(3), C.R.S. (2005), by operation of § 11-51-602(2), C.R.S. (2005), based on violations of §§ 11-51-501(1), C.R.S. (2005).
- 15. The Defendants offered or sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading (the buyers not knowing of the untruths or omissions), and therefore Defendants are liable to the Commissioner for damages under § 11-51-604(4), C.R.S. (2005), by operation of § 11-51-602(2), C.R.S. (2005), based on violations of § 11-51-501(1)(b), C.R.S. (2005).
- 16. Each Defendant is jointly and severally liable to the Commissioner for damages, rescission, restitution, interest, disgorgement, costs, reasonable attorneys fees, and other legal and equitable relief on behalf of all persons injured by the acts and practices described in this claim for relief pursuant to §§ 11-51-602(2), 604(3), 604(4), and 604(5)(c), C.R.S. (2005) based on violations of § 11-51-501, C.R.S. (2005), and the Commissioner is further entitled to a temporary, preliminary, and permanent injunction against each of the Defendants, their officers, directors, agents, servants, employees, and successors; any person who directly or indirectly, through one or more intermediaries, controlled or is controlled by or is under common control with any of the Defendants, and all those who acted in concert

participation with any of the Defendants pursuant to § 11-51-602, C.R.S. (2005), based on violations of § 11-51-501, C.R.S. (2005), enjoining the conduct alleged above.

SECOND CLAIM FOR RELIEF

[Offer or Sale of Unregistered Securities in violation of §11-51-301, C.R.S. (2005)]

- 17. Paragraphs 1 through 16 are incorporated herein by reference.
- 18. The interests offered and sold by Defendants are "securities" in that they are "investment contracts" as defined in § 11-51-301, C.R.S.
- 19. By engaging in the conduct described above, Defendants have made "offers" or "sales" of securities in the state of Colorado pursuant to § 11-51-201(13), C.R.S. (2005).
- 20. The securities that Defendants and their agents offered or sold were not registered or exempted from registration as required by § 11-51-301, C.R.S. (2005).
- 21. By engaging in the conduct described above, Defendants offered to sell or sold unregistered securities in violation of § 11-51-301, C.R.S. (2005).
- 22. The Commissioner is entitled to an award of damages, interest, costs, attorneys fees, restitution, disgorgement and other equitable relief on behalf of persons injured by the conduct of Defendants pursuant to §§ 11-51-602(2), 604(1) and 604(5)(a), C.R.S., based on violations of § 11-51-301, C.R.S.
- 23. The Commissioner is entitled to temporary, preliminary and permanent injunctive relief pursuant to § 11-51-602, C.R.S., against Defendants for their violations of § 11-51-301, C.R.S., and against their officers, directors, employees, successors and attorneys-in-fact, and any person who, directly or indirectly, through one or more intermediaries, controlled, or is controlled by or is under common control with Defendants, or who acted in concert or participation with Defendants in the sale of unregistered securities.

WHEREFORE, Plaintiff prays for relief as follows:

1. For preliminary and permanent injunctive relicf against all Defendants, and each of them, their officers, directors, agents, servants, employees, and successors; any person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with any of the Defendants, and all those in active concert of participation of Defendants, enjoining each of the Defendants' violations of the Colorado Securities Act, or successor statute.

- 2. For a judgment in an amount to be determined at trial against each Defendant, jointly and severally, for restitution, disgorgement, and other equitable relief pursuant to § 11-51-602(2), C.R.S. (2005), and for damages, rescission, interest, costs, reasonable attorney fees, and such other legal and equitable relief as the court deems appropriate, pursuant to §§ 11-51-602(2) and 604, C.R.S. (2005), all on behalf of persons injured by the acts and practices of all Defendants constituting violations of the Colorado Securities Act.
 - 3. For such other and further relief as the court deems proper.

Dated this /6 day of June 2006.

JOHN W. SUTHERS Attorney General

CHRISTINE C. STRETESKY, 31,74

Assistant Attorney General Business & Licensing Section

Attorneys for Plaintiff
*Counsel of Record